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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/841,850	04/25/2001	Banning Lary	70796.01	5817

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EXAMINER

TRUONG, BAO Q

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 11/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/841,850

Applicant(s)

LARY ET AL.

Examiner

Bao Q. Truong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims below are objected to because of the following informalities:

Claims 7 and 8, there is lack antecedent basic for "said array of light emitting diodes". There is no "array of light emitting diodes" being recited in claim 6 or 1.

Claims 19 and 20, there is lack antecedent basic for "said array of light emitting diodes". There is no "array of light emitting diodes" being recited in claim 18 or 14.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 14, 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Chien [US 5,485,358].

Regarding claim 14, Chien discloses a hat with a crown and a bill, and LEDs [04] (figure 1, column 2 lines 20-23).

Regarding claim 16, Chien discloses an array of LEDs [04] (figure 1).

Regarding claim 17, Chien discloses two arrays of LEDs [04] at a single trap [02 and 02'] (figure 1).

Regarding claim 18, Chien discloses a plurality of LEDs [04] (figure 1).

Regarding claim 19, Chien discloses a plurality of LEDs [04] to emit a single color spectrum (figure 1, column 2 lines 29-31).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chien as applied to claim 16 above, and further in view of Lebens et al. [US 6,095,661].

Regarding claim 20, Chien discloses a plurality of LEDs [04], but Chien does not disclose the LEDs emanating more than one color spectrum.

Lebens et al. teach the use of a plurality of LEDs [150], which emits more than one color spectrum for purpose of high intensity and color effect (figure 1, column 4 lines 23-35, column 5 lines 33-40 and column 7 lines 17-23).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the plurality LEDs of Chien with the plurality LEDs of Lebens et al. to emit more than one color spectrum in order to provide an advantage of visual effect.

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6. Claims 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirk [US 6,250,769] and further in view of Lebens et al. [US 6,095,661].

Regarding claims 23-25, Kirk discloses a cap [1] with a cove portion [2] and a visor [4], a flash light body [8], a battery flashlight and light source [6] and a slide switch [9'] (figure 1, column 1 lines 60-67, column 2 lines 1-22). However, Kirk does not clearly disclose one or more LEDs.

Lebens et al. teach the use of a plurality of LEDs [150] in a flashlight for purpose of high intensity and color effect (figure 1, column 4 lines 23-35, column 5 lines 33-40 and column 7 lines 17-23).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the plurality LEDs of Lebens et al. to emit more than one color spectrum in order to provide an advantage of visual effect.

7. Claims 1-25 are rejected under 35 U.S.C. 103(a) as being obvious over Lary [US 5,567,038] in view of Chien [US 5,485,358].

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed

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in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(I)(1) and § 706.02(I)(2).

Regarding claims 1-25, Lary discloses a hat [13] with a crown [14] and a bill [15], a lens cover [12] and a housing [19] containing a battery [26], a halide light [32] and a switch [25]. Lary discloses a series of attachment including a series of hooks [18], a series of loops [16] and segments of loops [21] (figures 1-6, column 2, lines 44-67, column 3, lines 1-62). Lary does not disclose the lighting emitting diode lighting device.

Chien teaches the use of array of LEDs in a headwear for purpose of increase lifetime of the light sources (title, figures 1-8, column 1 lines 35-40, and column 2 lines 39-42).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the array of LEDs of Chien to replace the halide light in order to provide a longer lifetime bulb.

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### ***Double Patenting***

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 5,567,038 and over claims 1-11 of U.S. Patent No. 5,911,494 in view of Chien [US 5,485,358]. The claims of US Patent No. 5,567,038 and No. 5,911,494 do not disclose the plurality of LEDs. Chien teaches the use of array of LEDs in a headwear for purpose of increase lifetime of the light sources (title, figures 1-8, column 1 lines 35-40 and column 2 lines 39-42).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the array of LEDs of Chien to replace the halide light in order to provide a longer lifetime bulb.

***R s p o n s   t o   A r g u m e n t s***

9.     Applicant's Declaration under 37 CFR 1.130 filed 15 October 2002 have not been considered because the Declaration is improper. The applicant recites the wrong patent application number 09/814,850.

***C o n c l u s i o n***

10.    The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

         Checkeroski [US 5,386,592] discloses a headband with hook-type material and light attached.

         Lary [US 5,738,431] discloses a cap with halogen light.

         Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bao Q. Truong whose telephone number is (703) 308-6452. The examiner can normally be reached on Monday-Friday (8:00 AM - 4:00 PM).

         If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra L. O'Shea can be reached on (703) 305-4939. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

         Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 0956.

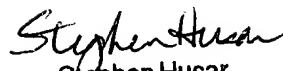


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Bao Q. Truong  
Examiner  
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BQT  
November 22, 2002

  
Stephen Husar  
Primary Examiner